

REMARKS

This paper is filed in response to the Office Action mailed on March 3, 2009 (the Office Action).

In the Application, claims 1-14, 17-40, and 43-52 are pending, of which claims 1 and 27 are in independent form. Claims 15-16 and 41-42 were previously canceled.

Claims 1-3, 5, 8-14, 17, 18, 20, 21, 26-29, 31, 34-40, 43, 44, 46, 47, 52, and 53 stand rejected under 35 U.S.C. § 103 as purportedly being unpatentable over U.S. Patent No. 6,487,585 to Yurkovic ("Yurkovic") in view of U.S. Patent No. 6,728,753 to Parasnis et al. ("Parasnis"), and in further view of U.S. Patent Publication No. 2004/0229673 to Malik ("Malik"). These claims also stand rejected under § 103 as purportedly being unpatentable over U.S. Patent No. 6,636,888 to Bookspan et al. ("Bookspan"), in view of Parasnis, and in further view of Malik.

Claims 4, 7, 30, and 33 stand rejected under § 103 as purportedly being unpatentable over Yurkovic, in view of Parasnis, Malik, and in further view of U.S. Patent No. 6,457,045 to Hanson et al. ("Hanson").

Claims 6 and 32 stand rejected under § 103 as purportedly being unpatentable over Yurkovic in view of Parasnis, Malik, and in further view of U.S. Patent. No. 6,560,637 to Dunlap et al. ("Dunlap").

Claims 23-25 and 49-51 stand rejected under § 103 as purportedly being unpatentable over Bookspan, in view of Parasnis, Malik, and in further view of Hanson.

The Applicants respectfully request reconsideration of the claims in view of these remarks, which address each of the issues raised in the Office Action. The Applicants submit that the Application is in condition for allowance and respectfully request the same.

REJECTION OF CLAIMS 1-3, 5, 8-11, 13, 14, 17, 18, 20 ,21, 26-31, 34-37, 39, 40, 43, 46, 47, AND 52 UNDER 35 U.S.C. § 103

To support a *prima facie* case of obviousness, the Office Action must offer a "clear articulation of the reason(s) why the claimed invention would have been

obvious.” KSR Intl. Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007); *also see* MPEP § 2143. The analysis supporting the rejection should be made explicit. *See* MPEP § 2143. Any rejection under § 103 must consider all the words in the claim. *See In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970); *also see* MPEP § 2143.03. Therefore, the cited references must teach or suggest all the claim limitations. *See In Re Royka* 490 F.2d 981 (CCPA 1974). Moreover, the prior art references must be considered in their entirety (i.e., as a whole) including portions that would lead away from the claims. *See W.L.Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 at 1550 (Fed. Cir. 1983); *also see* MPEP § 2141.02(VI).

Neither Yurkovic, Parasnis, and Malik nor Bookspan, Parasnis, and Malik, in combination or separately, consider all the words of the claims. In particular, neither combination discloses “...transferring to the client device...program code,” and/or “program code configured to cause a browser at the client device to be automatically launched...” as recited in the claims. Claim 1; emphasis added; *see also* claim 27. Moreover, both combinations include Parasnis, which may not be modified to include transferring program code configured to automatically launch a browser as recited in the claims. *See* claims 1 and 27. Accordingly, the Applicants respectfully traverse the rejection of claims 1-3, 5, 8-11, 13, 14, 17, 18, 20, 21, 26-31, 34-37, 39, 40, 43, 46, 47, and 52.

Malik Fails to Disclose Transferring Program Code as Recited in the Claims

The disclosure teaches transferring program code configured to automatically launch a browser application. *See* Paras. [0010] and [0011]. The program code may be configured to automatically launch the browser application as a media event begins:

“...at the time of registration, an applet (typically a cookie) is passed to the computer of the attendee, such that this cookie includes information concerning the attendee and the media event that the attendee registered for. Accordingly, at a predefined time prior to the media event (*e.g.*, five minutes), a browsing program may be launched by the applet resident on the attendee's computer...” Para. [0037]; emphasis added.

Claim 1 was previously amended to clarify this feature; Claim 1 recites in part:

“...transferring to the client device program code that includes information relating to the media event, the program code configured to cause a browser at the client device to be automatically launched for presentation of the media event ...” Emphasis added; see also Claim.

The Office Action admits that neither Yurkovic, Parasnis, nor Bookspan disclose this feature. See Office Action Pg. 3 ¶ 2; see also Office Action Pg. 10 ¶ 3. Therefore, the Office Action relies on Malik paragraph [0055], which discusses “setting a timer.” See Malik Para. [0055].

Setting a timer, however, is not what is claimed. In contrast to the claims, Malik does not disclose transmitting program code to a client device. Instead, Malik discusses “setting a timer” of a running program (i.e., configuring a messaging program to behave in a particular way). Applying configuration parameters to an existing program is fundamentally different than transferring program code (capable of operating independently of the program) as recited in the claims. See claims 1 and 27.

It is well-settled law that a reference must be considered in its entirety (i.e., as a whole) including portions that would lead away from the claims. See W.L.Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540 at 1550 (Fed. Cir. 1983); also see MPEP § 2141.02(VI). Malik mentions “setting a timer” in various contexts (e.g., to manage delivery of time-sensitive e-mail and to start an IM session). See Malik Paras. [0009] and [0049]. In each case, Malik describes “setting a timer” as configuring an active (e.g., running) program, and not as transferring program code as recited in the claims. See Malik Paras. [0009] and [0049]. Moreover, Malik describes “setting a timer” to invoke a component of the existing program, and not to launch an independent application (a browser application) as recited in the claims. See claims 1 and 27. Therefore, Malik clearly leads away from transferring program code as recited in the claims.

For example, at paragraph [0009] Malik discusses handling time-sensitive e-mail messages as follows:

"The e-mail message application program retries a predefined time limit for allowing the recipient to open the e-mail message and sets a timer [of the e-mail message application] to the predetermined time limit. The message server then stores the time-sensitive e-mail message in a mailbox associated with the recipient... If the recipient opened the e-mail message within the predefined time limit the e-mail message application program displays the content of the e-mail message in accordance with the rule set to the recipient." Malik Para. [0009]; emphasis added.

As shown above, "setting a timer" at paragraph [0009] involves configuring an e-mail application to display a time-sensitive message. Id. In this case, "setting a timer" involves applying configuration data to an existing program (setting a timer implemented by the existing program) and, as such, does not involve transferring program code as recited in the claims.

At paragraph [0049], Malik describes, "establishing an electronic conference in conjunction with instant messaging." Malik Para. [0049]. Malik describes "setting a timer" as configuring a timer implemented by the messaging program to invoke its IM applet component at a particular time:

"When each conference attendee ... opens the e-mail message ... If an attendee generated a positive reply signal, a timer may be set within that attendee's message client ... Additionally, the timer may be set to automatically launch the IM applet within the message client at the appropriate time so that the attendees can join the IM conference." Malik Para. [0049]; emphasis added.

As shown above, "setting a timer" is configuring a messaging program to invoke a particular component of the program (an IM applet) at the appropriate time ("...a timer may be set within that attendee's message client..."). Id.; emphasis added. As discussed above, configuring a program to perform a particular function is not transferring program code as recited in the claims. Moreover, the messaging program would have to be already running in order for the IM applet to be launched by the messaging program as instructed. Therefore, "setting a timer" at Para. [0049] cannot be construed as disclosing transferring program code as recited in the claims.

Paragraph [0055], which is cited in the Office Action, also describes establishing an "IM conference" (a "logic flow diagram illustrating a routine for

establishing an IM conference call.”) Malik Para. [0052]; emphasis added. Just as in paragraph [0049], paragraph [0055] discusses setting a timer in a messaging application in response to an attendee accepting an IM conference (“If an attendee has generated a positive reply signal...a timer is automatically set... to automatically launch the recipient's Internet browser's IM applet and connect with the IM Server ...”) Malik Para. [0055]; emphasis added. Although paragraph [0055] is silent as to how the timer is automatically set, paragraph [0049], which discusses the same operation (establishing an IM conference) states that the timer is set within the attendee's message client. See Malik [0049]. Accordingly, Malik [0055] does not disclose, “transferring... program code configured to cause a browser to be automatically launched for presentation...” as recited in the claims. See claims 1 and 27. Rather, paragraph [0055], clearly refers to applying configuring a timer implemented by an existing program (a message client).

Moreover, since each and every time Malik discusses “setting a timer,” Malik states that the timer is set within an existing program adapted to receive the configuration data (a messaging client, e-mail server, etc.), Malik clearly leads away from this feature of the claims. See W.L.Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540 at 1550 (Fed. Cir. 1983); also see MPEP § 2141.02(VI). Applying configuration data to a program is fundamentally different than providing program code to automatically launch the program.

Malik Fails to Disclose Transmitting Program Code Configured to Cause a Browser at the Client Machine to be Automatically Launched

Claim 1 recites:

“...program code configured to cause a browser at the client device to be automatically launched for presentation of the media event based on the information relating to the media event...” Emphasis added; see also claim 27.

As illustrated above, claims 1 and 27 recite, “program code configured to cause a browser to be automatically launched.” Claim 1; emphasis added; see also claim 27. The Applicants note that the claims recite that the program code is

configured to automatically launch in independent program (a browser), and not a component of another, already-running program.

In contrast to the claims, the Malik “timer” does not launch an application, much less an independent browser application as recited in the claims. Malik states that the timer launches a component of a message client program, “...automatically launch the IM applet within the message client at the appropriate time...” Malik Para. [0049]; emphasis added. The Applicants note that in paragraph [0049], Malik discusses launching an IM applet (a component of the message client) as opposed to the message client itself. *Id.* Clearly, the message client could not launch its IM applet, unless the message client was launched itself.

Just as in paragraph [0049], paragraph [0055] states that the timer is to: “automatically launch the... Internet browser’s IM applet...” Malik Para. [0055]; emphasis added. Again, the Applicants note that in paragraph [0055], Malik discusses launching a component of a browser (an IM applet of the browser), and not the browser application itself. *Id.* Clearly, the browser could not launch its IM applet, unless the browser was already running.

As shown above, Malik does not disclose program code configured to automatically launch a browser as recited in the claims. See claims 1 and 27. Rather, the timer is configured to cause the existing application invoke a particular component (IM client) of the application. See Malik Paras. [0049] and [0055]. Causing a program that is already-running to perform a particular function is not what is claimed. The claims recite program code configured to “cause a browser at the client device to be automatically launched...” See claims 1 and 27. Discussion of launching a component of an existing and/or already-running application does not disclose this feature. See Malik Paras. [0049] and [0055].

Parasnis May Not be Modified to Automatically Launch a Browser

Modifying Parasnis to transmit program code as recited in the claims would change the principle of operation of Parasnis. It is well-settled law that if a modification would change a principle of operation of the reference, then the teachings of the reference are insufficient to render the claims *prima facie* obvious. See In re Ratti, 270 F.2d 810 (CCPA 1959); Also see MPEP § 2143.02(IV). Therefore, Parasnis may not form the basis of an obviousness rejection of the claims.

Parasnis includes features intended to accommodate users who join a presentation late. For example, at col. 24, Parasnis reads:

“...there will always be some laggards who disregard their e-mail notifications, and visit the lobby page just prior to (or after) the start of the live presentation. In these instances, the attendees may not receive all of the HTML slide file content via the high-bandwidth FTS multicast prior to the start of the presentation...” Parasnis col. 24 lines 11-18; emphasis added.

If Parasnis intended the ability to automatically invoke an attendee's browser or other messaging application (as recited in the claims), the feature described above would not be necessary since users would not join the presentation late. Therefore, modifying Parasnis to include program code as recited in the claims would render these features surplusage, and thereby change Parasnis' principle of operation. See In re Ratti, 270 F.2d 810 (CCPA 1959); see also MPEP § 2143.02(IV). Accordingly, even if Malik (or another reference) did disclose, “program code configured to cause a browser at the client device to be automatically launched...” as recited in the claims, Parasnis could not be modified to incorporate this feature. Therefore, Parasnis cannot form the basis of a rejection under § 103.

Neither the Combination of Yurkovic, Parasnis, and Malik nor Bookspan, Parasnis, and Malik Render the Claims Unpatentable

Claims 1-3, 5, 8-14, 17, 18, 20, 21, 26-29, 31, 34-40, 43, 44, 46, 47, 52, and 53 stand rejected under a combination of Yurkovic, Parasnis, and Malik and/or a combination of Bookspan, Parasnis, and Malik. Both combinations rely upon Malik to disclose "...transferring to the client device...program code," and "program code configured to cause a browser at the client device to be automatically launched..." Claim 1; emphasis added; see *also* claim 27.

As discussed above, "setting a timer" as discussed in Malik discloses neither "transferring program code" nor program code configured to cause a browser to be automatically launched as recited in the claims. Therefore, both combinations fail to consider all the words of the claims. Furthermore, both combinations include Parasnis, which, as discussed above, may not be modified to include transferring program code as recited in the claims. Parasnis may not be modified to automatically launch a browser, since this feature would change the principle of Parasnis' operation and/or would render features of Parasnis surplusage.

Since both combinations fail to consider all the words of the claims and/or include references that may not be modified to include features recited in the claims, the Applicants respectfully traverse the rejection of claims 1-3, 5, 8-14, 17, 18, 20, 21, 26-29, 31, 34-40, 43, 44, 46, 47, 52, and 53 under § 103.

REJECTION OF CLAIMS 4, 7, 30, 33 UNDER 35 U.S.C. § 103

The Office Action rejects claims 4, 7, 30, and 33 under U.S.C. § 103 as purportedly being unpatentable over Yurkovic in view of Parasnis and further in view of Hanson. As discussed above, Yurkovic, Parasnis, and Malik fail to render claims 1 and/or 27 obvious. The Office Action does not purport, nor do the Applicants believe, that Hanson cures the defects of Yurkovic, Parasnis, and Malik with respect to claims 1 and/or 27. Therefore, the Applicants respectfully traverse the rejection of these claims.

REJECTION OF CLAIMS 6 AND 32 UNDER 35 U.S.C. § 103(A)

The Office Action rejects claims 6 and 32 under U.S.C. § 103 as purportedly being unpatentable over Yurkovic in view of Parasnis and further in view of U.S. Patent No. 6,560,637 to Dunlap et al. ("Dunlap"). As discussed above, even in combination, Yurkovic, Parasnis, and Malik fail to render claims 1 and/or 27 obvious. The addition of Dunlap does not cure this deficiency, nor does the Office Action allege such. Therefore, the Applicants respectfully traverse the rejection of these claims.

REJECTION OF CLAIMS 23-25 AND 49-51 UNDER 35 U.S.C. § 103

The Office Action rejects claims 23-25 and 49-51 under U.S.C. § 103 as purportedly being unpatentable over Bookspan in view of Parasnis, Malik, and in further view of Hanson. As discussed above, even in combination, Bookspan, Parasnis, and Malik fail to consider all the words of claims 1 and/or 27. The addition of Hanson does not cure this deficiency, nor does the Office Action allege such. Therefore, the Applicants respectfully traverse the rejection of these claims.

GENERAL CONSIDERATIONS

By the remarks provided herein, the Applicants have addressed all outstanding issues presented in the Office Action. Applicants note that the remarks presented herein have been made merely to clarify the claimed invention from elements purported by the Office Action to be taught by the cited references. Such remarks should not be construed as acquiescence, on the Applicants' part, as to the purported teachings or prior art status of the cited references, nor as to the characterization of the cited references advanced in the Office Action. Accordingly, Applicants reserve the right to challenge the purported teachings and prior art status of the cited references at an appropriate time.

CONCLUSION

For the reasons discussed above, the Applicants submit that the claims are in proper condition for allowance, and a Notice of Allowance is respectfully requested. If the Examiner notes any further matters that may be resolved by a telephone interview, the Examiner is encouraged to contact Kory Christensen by telephone at (801) 578-6993.

Respectfully submitted,

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